AT&T Arbitration Order (BST App. B, Tab 69). Although BellSouth had submitted cost data as part of the arbitration, the SCPSC found the studies insufficient to set permanent prices. The SCPSC instead instructed the parties to use the rates negotiated by BellSouth with another CLEC in the interim and ordered BellSouth to submit new "verifiable cost studies" later. AT&T Arb. Order at 15. This reason alone is sufficient to warrant rejection of the application, as the Commission has recently made clear. Michigan Order ¶ 292 (prices based on TELRIC are a necessary condition for checklist compliance); 47 C.F.R. §§ 51.505(d), 51.511.

Moreover, critical prices, such as for loops, are significantly higher than determined under the TELRIC Hatfield model, which models local telephone networks based on best available technology and business practices. Furthermore, none of the prices are geographically de-averaged, Varner Aff. ¶ 37, contrary to this Commission's mandate. Michigan Order ¶ 292; 47 C.F.R. § 51.507. The reciprocal compensation scheme offered by BellSouth also does not meet this Commission's standards, as there is no provision to ensure that compensation is symmetrical, as required by 47 C.F.R. § 51.711. See Varner Aff. ¶¶ 183-84.

BellSouth's attempts to save its application from these fatal infirmities are wholly unavailing. BellSouth first argues that the SCPSC found that the SGAT prices satisfied the Act in the section 271 proceeding before it. Varner Aff. ¶ 27. BellSouth neglects to mention, however, that no cost studies were submitted in that proceeding. The SCPSC simply declared, ipse dixit, that these rates -- which were not determined from cost studies and which the PSC itself intends to replace with prices based on cost studies as soon as it can -- are cost-based because, among other reasons, "the negotiated rates incorporated into the Statement were certainly not set by the parties without reference to the cost of the services to be provided." SCPSC Order at 55. This declaration

(lifted from BellSouth's proposed order) was, at best, arbitrary and capricious, and entitled to no weight whatsoever in this Commission's review.

BellSouth does not even attempt to justify the SCPSC's determination. Instead, it tries to circumvent the question altogether by declaring that the SCPSC's pricing determinations "are conclusive" as to whether BellSouth meets the pricing requirements of the checklist for entry into the in-region interLATA market. BellSouth Br. at 37. As this Commission is well aware, that was not a question determined in the Eighth Circuit's decision in Iowa Util. Bd., see Michigan Order ¶ 283, nor is such a view reconcilable with the delegation of power in section 271 to this Commission, with the state commissions playing a consultative role. Id. ¶ 285. This Commission not only has the authority to review the adequacy of BellSouth's application, including its proposed prices, the Commission is required to do so. And, although the Commission must consider any determination by the SCPSC, it is not required to accord such determinations any particular weight. See 47 U.S.C. § 271(d)(2)(B); cf. § 271(d)(2)(A).

BellSouth evidently lacks confidence in this argument because, despite its reiterated assertion that this Commission has to accept the SCPSC's decision, BellSouth makes a half-hearted attempt to establish that its rates are adequate. BellSouth's intimation that its interim prices are adequate in themselves to meet the checklist because they fall within the proxy ranges set forth by this Commission is misleading factually and wrong as a matter of law. This Commission never stated that adopting its proxy rates satisfies the requirements of section 252(d) or of the checklist and therefore substitutes for establishing rates based on careful reviews of forward-looking cost information. To the contrary, this Commission set forth proxy ranges as "interim only . . . until a state sets rates in arbitrations on the basis of an economic cost study, or

until we promulgate new proxies based on economic cost models." Local Competition Order ¶ 787. As the Commission made clear, the proxy ranges were not based on economic cost studies sufficient to establish permanent rates based on the cost of providing elements determined without reference to rate of return or other rate-based proceeding, as required by the Act. 47 U.S.C. § 271(c)(2)(B), § 252(d)(1)(A)(i).

Furthermore, only a handful of the hundreds of recurring rates in the SGAT correspond to any FCC proxy rate. Most of BellSouth's rates, and especially its higher rates, are for elements or charges for which this Commission did not provide interim proxy rates, such as non-recurring charges, physical collocation charges, SS7/signaling charges, directory assistance, operator services and interim local number portability.

Indeed, none of BellSouth's non-recurring charges has been subjected to any type of section 252 cost review or corresponds to any FCC proxy rate. The Commission recently held that non-recurring charges, as well as recurring charges, must be cost-based. Michigan Order ¶ 296.

BellSouth's attempt to salvage its interim rates by characterizing them as subject to retrospective true-up, Varner Aff. ¶ 27, is similarly unavailing. True-up does not establish that temporary, non-TELRIC rates meet the standards set by the Act; it only restates the problem in a different way. Section 271 requires a BOC to comply with all checklist requirements at the time it applies; it does not authorize the Commission to grant the application based on a promise of future checklist compliance. Michigan Order ¶¶ 49, 56. The Commission has no basis to speculate about what rates will be established. The SCPSC has not even committed to a particular pricing methodology. SCPSC Order at 56 ("the Commission has not adopted a particular cost methodology"). Furthermore, BellSouth did not propose any permanent rates in the SGAT.

BellSouth's application is simply premature. BellSouth chose when to file its section 271 application. If it does not yet meet the checklist, as here, it is obliged to wait.

Finally, the "cap" on rates that BellSouth trumpets is of almost no use to CLECs, as it applies only to interconnection or UNEs placed in service prior to the setting of final rates (estimated to take place in January, 1998). See Varner Aff. ¶¶ 32, 33. Thus, even if BellSouth were to implement adequate OSS and otherwise comply with the checklist in the next 90 days, and even if CLECs could then immediately place orders,[20] all those orders would be subject to the new, not yet established rates. In short, CLECs who are quite rationally awaiting BellSouth's compliance with the Act before ramping up will be subject to new rates the SCPSC chooses to adopt, and will have no protection from the cap.

IV. BELLSOUTH HAS NOT EVEN OFFERED PERFORMANCE STANDARDS NECESSARY TO ENSURE PROVISION OF SERVICE TO CLECS ON REASONABLE, NONDISCRIMINATORY TERMS.

In recognition of the fact that CLECs are entirely dependent on monopoly providers for interconnection, resale, and unbundled elements, Congress required that BOCs provide access to all three means of entry on reasonable and nondiscriminatory terms. See, e.g., 47 U.S.C. §§ 251(b)(1), 251(c)(2), 251(c)(3), 251(c)(4); 271(c)(2)(B)(i), (ii), (xiv). These guarantees are hollow without objective proof and standards to demonstrate that the quality and timeliness of service BOCs provide to their captive CLEC customers are both reasonable and equal to the

[20] This assumes, unrealistically, that BellSouth provides all required specifications and business rules to CLECs for the new systems in ample time to allow the required development on the CLEC side, that BellSouth otherwise irreversibly opens its market to competition rather than continuing to engage in dilatory and obstructionist tactics, that the final prices are truly cost-based, and that CLECs could ramp-up overnight once the costs are established.

quality and timeliness of service the BOCs provide to themselves (including their customers and affiliates). Vague promises of reasonable and nondiscriminatory service without specific, objective, enforceable standards are as useless as a contract that calls for "reasonable" prices without disclosing any particular prices.

It is critical to distinguish at the outset between an obligation to file reports based on various performance measures (e.g., length of time to provision a loop), and an obligation to abide by performance standards, which actually require service to be provided at a specified level (*e.g.*, 95% of loops must be provided within X hours of service order receipt; all FOCs must be received within four hours; X% of service restorals must be completed within two hours if no dispatch is required). Absent performance standards, CLECs will not know the quality and timeliness of service they can expect to receive from the BOCs in order, among other things, to advise CLECs' potential and actual customers what service they can expect from the CLEC.[21] And without performance standards, CLECs have no basis to hold the BOCs to a specified level of performance.

The Commission has recognized that "proper performance measures with which to compare BOC retail and wholesale performance, and to measure exclusively wholesale performance, are a necessary prerequisite to demonstrating compliance with the Commission's 'nondiscrimination' and 'meaningful opportunity to compete standards.'" Michigan Order ¶ 204

[21] The practical importance of effective performance standards was brought home to MCI in its resale launch in California. PacBell's service to MCI was so inferior and erratic that MCI was forced to concede to potential customers that MCI could not determine when new service would be turned up, and was forced to tell customers that they could receive service faster from PacBell. King Decl. ¶ 130.

(citing DOJ Mich. Eval., at 3). In the Michigan Order, the Commission emphasized the findings of the Department of Justice and the Michigan PSC that detailed performance measures and standards, including disaggregated data and "precise clarity" in definitions, are necessary to prevent BOCs from back-sliding after they are granted interLATA authority, and to permit a determination of whether the BOC has complied with the Commission's non-discrimination rules. Michigan Order ¶¶ 205-06, 209. Thus, the Commission concluded that "[c]lear and precise performance measurements are critical to ensuring that competing carriers are receiving the quality of access to which they are entitled." Id. ¶ 209. These performance measures and benchmarks are not limited to electronic OSS connections, but must cover a wider array of wholesale support functions needed for local service. Id. ¶¶ 205-06; DOJ Mich. Eval. 38-40 & App.A; DOJ Oklahoma Eval., Affidavit of Michael J. Friduss, passim.

A. BellSouth Offers No Performance Reporting in its SGAT.

Notwithstanding the clear directives of the Commission, BellSouth's SGAT offers none of the performance measure reports delineated in the Michigan Order. Having conceded on cross-examination the importance of performance measurements for pre-ordering and ordering functions (Stacy testimony, BST App. C, Vol. 4 at p.83), BellSouth witness Stacy claims that the SCPSC approved, as part of the SGAT, the performance measures included in BellSouth's interconnection agreements. Stacy Performance Measures Aff. ¶¶ 86 ("Stacy II Aff."). Mr. Stacy's statement is not accurate. The SGAT contains none of the performance measure reporting that Mr. Stacy claims BellSouth offers. Indeed, a different BellSouth witness, Mr. Varner, testified that BellSouth does not even recognize the Commission's authority to require performance measurements, and thus that BellSouth did not include them in the SGAT. See Varner Supp.

Testimony, BST App. C, Vol. 3, Tab 58, pp.121-22. Indeed, BellSouth has formally challenged this aspect of the Commission's decision, arguing that the Commission had no authority to require the performance measurements outlined in the Michigan decision.[22] This shell game is consistent with BellSouth's general approach to its obligations under section 271: it claims, on the one hand, that no one could question its efforts to comply with its obligation to open its markets, BellSouth Br. at 20, at the same time it refuses to acknowledge or openly challenges those same obligations.

Thus, even if the Commission were to conclude that BellSouth is permitted to proceed under Track B, it would have to reject the application because the SGAT contains none of the performance measurements the Commission required, and none of the performance measures Mr. Stacy relies upon to support BellSouth's application. In short, performance measures are not part of "a statement of the terms and conditions that the company generally offers to provide . . . [which] has been approved or permitted to take effect by the State commission under Section 252(f)." 47 U.S.C. § 271(c)(1)(B). As the Commission held, a BOC must satisfy Track A using interconnection agreement(s), or satisfy Track B (where it applies) using an SGAT. Michigan Order ¶¶ 7-8. Thus, even if BellSouth's application could properly be considered under Track B, performance measures in interconnection agreements or promised in affidavits would be of no avail since BellSouth has refused to be bound by such measures as part of its SGAT.

B. BellSouth Offers No Performance Standards With Enforcement Mechanisms.

In addition to the fact that BellSouth offers none of the required performance measures as

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[22] See Petition of BellSouth for Reconsideration and Clarification, In re: Application of Ameritech Michigan Pursuant to Section 271 of the Telecomm. Act of 1996 to Provide In-Region, InterLATA Services in Michigan (CC Docket No. 97-137) (Sept. 18, 1997), at 4-6.

part of its SGAT, it does not offer in any document -- an SGAT, interconnection agreement or paper promise in an affidavit -- performance standards with enforcement mechanisms. Performance reporting alone is ineffective to guarantee service on reasonable, nondiscriminatory terms. Even if BellSouth accurately reported in sufficient detail all aspects of service provided to CLECs, the sole result would be paper reports. Performance reporting alone is inadequate without (1) established standards against which to judge performance to CLECs (individually and as a group); (2) data as to how frequently BellSouth meets specified intervals or benchmarks for its own customers or affiliates; and (3) self-executing remedies for failure to meet these standards.

Reporting alone might show, for example, that BellSouth provides loops to MCI in an average of ten days even if it offers a "target" of two days. At that point, MCI might file a lawsuit, or a complaint with the SCPSC. Months or years later, the complaint would be decided. From BellSouth's perspective, the possibility of an uncertain monetary penalty months or years after MCI has lost customers and/or its good reputation will be a small cost of doing business. As BellSouth is acutely aware, only performance standards backed up by substantial, self-executing remedies have any prospect of deterring BOCs from providing poor service to their CLEC dependents. The Commission has already stated its firm agreement with the principle that "without enforcement mechanisms, reporting requirements are 'meaningless.'" In the Applications of NYNEX Corp. and Bell Atlantic Corp. for Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, ¶ 208 (FCC) (File No. NSD-L-96-10) (rel. Aug. 14, 1997) [hereinafter cited as BA/NYNEX Merger Order] (citing ex parte submission of TCG Corp.). Yet nowhere in BellSouth's testimony, interconnection agreements, or SGAT does BellSouth even commit to the principle of performance standards with enforcement mechanisms.

The Stacy affidavit offers "process control" reports, but they are just that -- reports of whether certain specified functions are provided within a wide range of levels. For example, BellSouth offers to report the percentage of provisioning troubles with residential resale orders, dispatch required, within the first 30 days of the order. The range of acceptable performance BellSouth offers is a staggering 20% to 90% (BST App. A, Tab 13, Ex. WNS-9, p.21); i.e., no action would be taken if CLECs experience troubles with 90% of their orders, while BellSouth experiences troubles with only 20% of its own orders. This is not parity. BellSouth's process control reports do not tie BellSouth to a fixed standard of service or require any self-executing remedies for failure to meet a particular standard.

BellSouth is fully aware of the difference between process control reports and actual standards, because in one or two instances it has actually agreed to a standard (although not in its SGAT). Thus, in its AT&T agreement, BellSouth agrees that 99.9% of all LIDB queries will receive responses within two seconds, and that there must be at least a 99.9% reply rate to all query attempts. (BST Ex. WNS-4, page 9). Although there are no self-executing remedies to encourage compliance with this standard, it is at least a standard. There is no reason why BellSouth should agree to a standard for LIDB, while nearly every other critical aspect of local service, including pre-ordering, provisioning, maintenance, billing accuracy, etc., is left effectively uncontrolled.

Similarly, BellSouth offers only to "discuss targets" for critical functions such as the provision of unbundled elements. Stacy II Aff. ¶ 35. Discussing or even proposing targets is a far cry from committing to enforceable performance standards in a legally binding document before interLATA authority is granted. BellSouth has simply refused to commit to performance

standards needed to establish parity. BellSouth is willing to discuss targets, but not to hold itself to any level of performance. There is simply nothing to prevent BellSouth from providing inferior service to CLECs, and/or degrading the level of service to CLECs after it receives interLATA authority.

Moreover, even where BellSouth has proposed target intervals, such as in its agreement with AT&T stating a target of providing between 4-15 business lines in 4 days or less, BellSouth does not state how often it will meet that interval for the CLEC, or how often it meets that target for itself or its affiliates. And even that information would be insufficient without additional detail. For example, suppose BellSouth reported that it provides between 4-15 business lines to CLECs, and to itself, in 4 days or less, 95% of the time. That would not necessarily mean that parity has been provided. It could well be that BellSouth provides lines to itself in 1 day or less 95% of the time, and to CLECs in 4 days or less 95% of the time; but by reporting only on the percentage of orders filled in 4 days or less, without detailing the actual number of days, the report would inaccurately suggest parity.

Remarkably, the only redress BellSouth even offers as part of its control limit proposal is that if performance falls outside the wide control limits for three consecutive months, it will conduct "an investigation or a study" of the cause. Id. ¶ 32. To do more, it insists, would mean "overreacting" to service deficiencies. Id. In short, CLECs can rest assured that if they lose customers and suffer damage to their reputation because of inferior, discriminatory service at the behest of BellSouth for at least three months, BellSouth will not overreact; it will investigate the problem. Because of its refusal to commit to any binding service levels with effective enforcement mechanisms, BellSouth plainly has not offered, let alone provided, access to resale,

interconnection and unbundled elements on reasonable, nondiscriminatory terms.

C. The Reporting BellSouth Offers is Inadequate.

In addition to the fact that BellSouth fails to offer performance standards with self-executing remedies, the reporting it offers to provide in its testimony and interconnection agreements[23] is wholly inadequate even to produce the underlying data to determine whether it has met its obligation to provide interconnection, resale and unbundled elements, including OSS, on reasonable, nondiscriminatory terms. Some of the key areas in which BellSouth does not currently even offer reporting include:

• Pre-ordering functions. The Michigan Order recognizes the importance of measuring pre-ordering functions. Michigan Order ¶ 140; see also DOJ Oklahoma Eval., Affidavit of Michael J. Friduss, ¶ 61. CLECs must have a reliable means of obtaining information on desired features and their availability, service delivery intervals, telephone number assignment, and street address availability, while the potential customer is on the line. Without timely and accurate pre-ordering information, CLECs cannot come close to matching the service that BellSouth provides to potential customers during the pre-ordering stage. CLEC service representatives must be perceived as equally competent, knowledgeable and timely as their BOC counterparts, particularly because the pre-ordering experience is often the only direct, personal contact a customer will have with MCI other than receiving a bill. Equally important, inaccurate pre-ordering information results in rejected orders. Indeed, as noted above, BellSouth admitted on cross-examination that performance measurements on pre-ordering and ordering are "essential to determining that we're

[23] As noted above, the limited reporting that BellSouth does offer is not included in its SGAT, and thus cannot be used as the basis for a Track B application.

providing those services at parity." Stacy Testimony, BST App. C, Vol. 4, at p.83. The SCPSC's decision does not attempt to reconcile this concession with its conclusion that BellSouth was providing each checklist item on reasonable and nondiscriminatory terms.

• Network Performance. BellSouth does not measure critical aspects of network performance. Indeed, BellSouth conceded on cross-examination that "[w]e have not agreed on good measures of network performance yet." Stacy Testimony, BST App. C, Vol. 4, at p.83. This concession is not mentioned in the SCPSC's adoption of BellSouth's findings of fact.

• Firm Order Confirmations. Although the Commission emphasized the importance of reporting the timeliness of FOCs, Michigan Order ¶ 187, BellSouth concedes it not yet capable of reporting this information, and cannot even provide reports on order rejects and error notices. Stacy II Aff. ¶ 43.

• Operator Service and Directory Assistance Responsiveness. In order to ensure that ILECs do not enjoy an unfair competitive advantage, it is important to measure how quickly the BOC provides operator and directory assistance services both to its customers and to CLEC customers. Friduss Aff. ¶ 67.

• Held Orders. It is critical to determine how many non-completed orders are being held, and for how long, since customers expect orders to be completed on time. The quantity of held orders, and length of time held, for CLEC orders must be compared to the BOC's performance as to internal orders for its own customers. Friduss Aff. ¶ 63; Michigan Order ¶ 212.

In addition to the glaring absence of these critical performance measures, even the functions BellSouth has promised to measure will not be measured in sufficient detail to provide the data needed to determine parity and the provision of service on reasonable terms. For

example, it is impossible to determine if BellSouth is discriminating against CLECs if it lumps together multiple types of services in a single report. Reports must disaggregate the type of service, such as:

-Resold Residence POTS	-Resold Business POTS
-Resold Residence ISDN	-Resold Business ISDN
-Resold Centrex/Centrex-like	-Resold PBX trunks
-Resold Channelized T1.5 service	-Other Resold Services
-UNE Combinations (at least DS0 loop + local switch + transport elements)	-UNE Channelized DS1 (DS1 loop + multiplexing)
-Unbundled DS0 Loop	-Unbundled DS1 Loop
-Other Unbundled Loops	-Unbundled Switch
-Other UNEs	

These service types, as well as formulas for performance measurements and service quality levels, are included in a set of Service Quality Measurements prepared by the Local Competition Users Group ("LCUG"), of which MCI is a member, and in a set of additional measurements prepared by MCI. The LCUG and MCI recommendations are attached hereto as ex. G. The importance of sufficiently detailed reporting is emphasized in the Commission's Michigan Order, ¶ 212.

Similarly, there are multiple types of orders. A report that states that "orders" are provisioned in an average of X hours or days is meaningless without specifying the type of order. For example, a feature change should be completed in a matter of hours, whereas installation of dedicated DS1 transport may take 2-3 days. At a minimum, the following order types should be separately reported:

-New Service Installations

-Service Migrations Without Changes

-Service Migrations With Changes

-Local Number Porting

-Move and Changes Activities

-Feature Changes

-Service Disconnects

The level of disaggregation and detail required in order to obtain meaningful reports is also described in the LCUG and MCI recommendations (ex. G hereto). Neither BellSouth's SGAT nor its interconnection agreements come close to offering to report the necessary detail described in the Michigan Order, Department of Justice testimony, or the LCUG and MCI recommendations, and thus do not come close to satisfying the checklist requirements for which performance data is needed -- checklist items (i) (interconnection), (ii) (unbundled elements including OSS), (iv) (loops), (v) (transport), (vi) (switching), (vii) (911, directory assistance and operator services), (x) (databases and signaling), (xi) (interim number portability), and (xiv) (resale).

V. BELLSOUTH DOES NOT OFFER OR PROVIDE ADDITIONAL ITEMS ON THE COMPETITIVE CHECKLIST ON REASONABLE AND NONDISCRIMINATORY TERMS.

In addition to the OSS, pricing, and performance problems described in the preceding sections, the fourteen items of the Act's competitive checklist are not, as BellSouth claims, otherwise "ready and waiting" for CLECs in South Carolina to order them. BellSouth Br. at 17. That is because it takes more than simply listing all of the checklist items in an SGAT for those items to be commercially available to competitors on terms and conditions that comply with the

Act. Even if Track B were applicable (and it clearly is not under the terms of the Act), and BellSouth were therefore required to "generally offer" each checklist item, BellSouth would have to demonstrate that it could provide each item in the real world. An "offer" must be more than just a recitation of the Act's requirements -- it must include reasonable and nondiscriminatory terms and conditions as well as reliable implementation procedures.

BellSouth seeks to excuse its failure to offer more because CLECs have not made as much progress as BellSouth thinks they should. But whatever the uncertainty about how soon CLECs will offer residential service in South Carolina (in light of BellSouth's noncompliance with the Act and the absence of final prices), it is undisputed that CLECs are currently trying to provide a range of facilities-based services to business customers there, and to business and residential customers in BellSouth's region as a whole. Given that CLECs stand ready to turn a legitimate offer into real-world competition for major segments of the market, BellSouth's "offer" is inadequate unless BellSouth has shown that it can actually deliver what is promised on terms and conditions that comply with the Act. BellSouth has not done so. Indeed, as to some items, BellSouth has expressly disavowed any intention of fulfilling its obligations under the checklist.

BellSouth has not produced, and cannot produce, sufficient evidence to show that a CLEC in South Carolina today could order and receive each of the checklist items on reasonable and nondiscriminatory terms. BellSouth claims "extensive, successful efforts to make the required items available in practice," BellSouth Br. at 33, but the fact is that BellSouth has little or no experience providing most checklist items to CLECs in South Carolina. Even when BellSouth's entire nine-state region is considered, BellSouth's experience providing checklist items, particularly unbundled network elements, is not "extensive," and it is certainly not "successful."

More fundamentally, BellSouth's vague claims that it has provided checklist items in some quantity to some CLEC in its region are not sufficient standing alone to show that BellSouth has made those checklist items available on reasonable and nondiscriminatory terms using reliable systems sufficient to support the development of meaningful local competition. What BellSouth ignores are the specific terms and conditions and the implementation experience, such as installation intervals, that determine whether the items were provided at parity and in a manner that does not unreasonably impede competition. It is not enough, for example, for BellSouth to say that it has provided 4,316 unbundled loops in its region (zero in South Carolina). BellSouth Br. at 42. BellSouth must also prove that those loops were provided within intervals that are at parity with the time in which BellSouth provides service to its own customers, and that -- if interim local number portability was ordered in conjunction with those unbundled loops -- the cutover of the loop was coordinated with the porting of the number such that the customer did not lose service for any substantial period of time. These critical issues are neither addressed in the SGAT nor explained in BellSouth's affidavits.

In order for CLECs to take full advantage of the interconnection, unbundling, and resale that BellSouth must provide under the Act, they must be able to depend on established standard procedures through which they can be sure they will obtain the desired elements in a reasonable and nondiscriminatory fashion. At a minimum, such procedures must be set forth in the SGAT, not in separate handbooks or guidelines that BellSouth can alter unilaterally, and not left to be worked out in negotiations or through a lengthy Bona Fide Request ("BFR") process. This defect runs throughout BellSouth's SGAT, rendering it incapable of truly "offering" the checklist items as required by the Act.

Finally, this Commission should not be distracted by BellSouth's remarkable argument that the SCPSC's approval of the SGAT is effectively dispositive in this proceeding. See BellSouth Br. at 18 & n.13. As is plain from the face of the Act, there simply is no statutory requirement that this Commission give "great weight" to the SCPSC's adoption of BellSouth's finding that "the [SGAT's] offerings are not mere paper promises, but rather are demonstrably ready and waiting for CLECs who choose to place orders." BellSouth Br. at 18. The need for this Commission to make an independent determination is particularly acute here. As discussed above, the SCPSC simply signed the proposed findings of fact and law submitted by BellSouth in the state proceeding, adopting verbatim BellSouth's self-serving description of how it has complied with the competitive checklist. Compare SCPSC Order at 27-53 (July 31, 1997) with Proposed Order of BellSouth, at 27-53 (July 22, 1997) (BST App. C, Vol. 8, Tab 68). In so doing, the SCPSC repeatedly ignored record evidence contradicting BellSouth's claims to be offering all checklist items as required by the Act. For example, the SCPSC approved BellSouth's unbundled loop offering without discussing or even mentioning ACSI's testimony about BellSouth's inability or unwillingness to provide unbundled loops in a timely manner in Georgia. See Murphy Direct Testimony at 11-15 (BST App. C, Vol. 7, Tab 64). The SCPSC similarly ignored testimony that BellSouth had not committed to any fixed intervals for providing unbundled loops. See Hamman Direct Testimony, at 26 (BST App. C, Vol. 7, Tab 64).

Likewise, the SCPSC simply adopted BellSouth's reasoning that, merely because it had provided collocations in its region, it fully satisfied its collocation obligation under the Act. Completely absent from the SCPSC's order is any discussion of the issues raised by CLECs concerning the adequacy of the procedures used by BellSouth to implement collocation. See, e.g.,

Post-Hearing Brief of MCI, at 30 (noting that many details and specifications with respect to collocation are contained in BellSouth's Collocation Handbook, which BellSouth can unilaterally amend at any time without PSC approval) (BST App. C, Vol. 8, Tab 76). Again, in the case of unbundled switching, the SCPSC rubber-stamped BellSouth's claim to have provided that checklist item without even addressing two witnesses' testimony that BellSouth had not yet developed an unbundled switching network element that was capable of providing all of the features and functionalities of the switch. See Gillan Direct Testimony, at 30 (BST App. C, Vol. 7, Tab 64); Hamman Testimony, at 32-33. In addition, the SCPSC did not address the issue of combinations of network elements at all, and thereby ignored substantial evidence that BellSouth has not complied with the legal requirements then in effect, and did not address BellSouth's OSS deficiencies. See, e.g., Hamman Testimony, at 20-22; Gillan Testimony, at 36-37; MCI Post-Hearing Br. at 31-35. Under these circumstances, the PSC's decision is entitled to no deference.

In addition to substantial checklist deficiencies described above relating to OSS, pricing and performance standards, BellSouth fails to meet the checklist in the following ways:

Combinations of Network Elements. BellSouth refuses to provide combinations of unbundled network elements that are already combined within its network, and it claims the right artificially to "uncombine" these elements and make a CLEC obtain the unbundled network elements individually and combine them itself. See BellSouth Br. at 29; SGAT § II.F; Varner Aff. ¶ 77. BellSouth acknowledges that this position violated the binding regulation that was in effect at the time it submitted its application (see BellSouth Br. at 20, 39-40) -- an admission sufficient to require rejection of the application.

The Eighth Circuit's recent rehearing order (Iowa Util. Bd. v. FCC, No. 96-3321 (slip op.

Oct. 14, 1997)) does not require a different result. To begin with, BellSouth's position violates section 251(c)(3) -- and thus section 271(c)(2)(B)(ii) -- even under the Eighth Circuit's narrow reading of that provision. The Eighth Circuit permitted an ILEC to refuse to provide network elements on a combined basis only on the express condition that the ILEC grant CLECs physical access to its network, and all other necessary information, so that a CLEC can combine the elements itself. Iowa Util. Bd., 120 F.3d at 813. If BellSouth insists on vandalizing its own network so that CLECs will face the additional time and expense of recombining previously combined elements, BellSouth must provide CLECs with the access to its network -- both hardware and software -- that CLECs need in order to put back together what BellSouth has broken apart.[24] BellSouth makes no such commitment in its SGAT, even in general terms; neither does it describe specific procedures whereby a CLEC can obtain access to BellSouth's network to combine the network elements.

The SGAT states only that "BellSouth will physically deliver unbundled network elements where reasonably possible," with no explanation of what standards BellSouth will use to determine a reasonable possibility or how long BellSouth will take to deliver these elements when it is willing to do so. See SGAT § II.F.1. BellSouth commits only to negotiate about providing additional BellSouth services to CLECs "to assist in their combining or operating BellSouth unbundled network elements" (id.), but it does not explain what these services might be or commit to provide them on reasonable and nondiscriminatory terms and conditions. This does not even

[24] As part of providing this access, BellSouth must provide the information that permits CLECs effectively to utilize this access -- the information about how its switches are programmed, how its databases can be accessed, and how its physical facilities can be combined.

remotely constitute a specific, enforceable commitment to provide the access required by the Eighth Circuit.

Nor does the SGAT constitute a lawful substitute for such access. The Commission might conclude that an ILEC could avoid the obligation to provide physical access by agreeing to perform the combination function itself at forward-looking cost-based rates consistent with the Act. Because section 251(c)(3) expressly requires ILECs to provide unbundled network elements "in a manner" that permits CLECs to combine them, the terms and conditions on which these network elements are provided are fully subject to the requirements of sections 251 and 252(d), including the requirement that access to these network elements be provided at cost-based rates. Of course, in the case of elements already combined in an existing network, that cost will be zero in most instances. But the SGAT does not contain any such pricing mechanism.

More fundamentally, BellSouth's refusal to provide elements in presently existing combinations provides an independent basis for this Commission to reject its application notwithstanding the Eighth Circuit's recent rehearing decision. The Commission has an independent obligation to find that an applicant has satisfied each checklist item, and critical checklist items -- access to local loops, access to unbundled local switching, access to local transport, nondiscriminatory access to databases -- do not incorporate the <u>different</u> requirements of sections 251 and 252 that were the subject of the Eighth Circuit decision. It is well within the Commission's authority to rule, for example, that a BOC that tears out the network interface device ("NID") in responding to a request for "local loop transmission from the central office to the customer's premises" (§ 271(c)(2)(B)(iv)) has not satisfied checklist item (iv).

In any event, numerous other regulations that were upheld by the Eighth Circuit are

violated by BellSouth's practices. E.g., § 51.313(b) (requiring ILECs to provide access to unbundled elements on the same "terms and conditions" that they enjoy themselves); § 51.309(a) (forbidding ILECs from imposing "limitations, restrictions or requirements" on the use of unbundled elements); § 51.307(b) (forbidding ILECs from denying CLECs two or more elements that are connected to each other). Moreover, this Commission has a duty to determine the meaning of the requirement in section 271(c)(2)(B)(ii) that ILECs provide "[n]ondiscriminatory access to network elements in accordance with the requirements of Section[] 251(c)(3) ."[25] Allowing BellSouth to take apart presently combined elements is self-evidently discriminatory, for BellSouth would be able to use the existing combined elements without the increased costs, delay and service outages to their customers from disassembling and recombining them. The sole purpose and effect of such conduct would be to impose on new entrants wholly unnecessary costs and delays that BellSouth does not incur. Unless BellSouth provides CLECs with the access to unbundled elements on the same terms and conditions as BellSouth faces, it cannot meet section 271(c)(2)(B)(ii)'s requirement of "[n]ondiscriminatory access."

Finally, BellSouth leaves open the possibility that it will stop providing network elements it currently offers because they are in fact combinations. For example, BellSouth's claimed right to disassemble existing network elements would permit it to refuse to provide unbundled loops because the loops are in fact combinations of several network elements, including feeder and distribution. BellSouth commits neither to continue to provide unbundled loops as unbundled

[25] This is not a situation in which the Commission necessarily is required to acquiesce in the Eighth Circuit's interpretation of section 251(c)(3). For reasons discussed above, however, the Commission need not reach this issue.

loops, nor to provide access to its network sufficient to permit CLECs to combine the elements that BellSouth claims makes up loops, nor to combine the elements itself at cost-based rates. At a minimum, the SGAT's failure to address these issues in any concrete, specific, enforceable way is a failure to demonstrate compliance with the terms of the Act and requires denial of BellSouth's application.

Interconnection. BellSouth does not provide interconnection as required by the Act because it fails to set forth in its SGAT any implementation details for virtual or physical collocation. Rather than offering standard procedures for ordering and provisioning collocation, the SGAT refers to BellSouth's Negotiations Handbook, a separate document that was not approved by the PSC, that is apparently not subject to PSC approval, and that BellSouth may amend unilaterally at any time. See SGAT §§ I.C., II.B.6.; Milner Aff. ¶ 15. Even the handbook omits critical details, leaving such terms as implementation intervals, for example, to be worked out between the CLEC and BellSouth in negotiations. See Milner Aff. ¶ 23. These omissions are all the more important given BellSouth's lack of experience providing physical collocation in particular. As of August 31, 1997, BellSouth has completed no physical collocations in South Carolina and only fourteen throughout its nine-state region. See Milner Aff. ¶ 20. Thus, BellSouth has not yet established standard procedures, on which CLECs can plan and rely, through a course of practice, and there is no track record that CLECs can use to ensure that BellSouth provides collocation on reasonable and nondiscriminatory terms after it obtains in-region long distance authority. BellSouth does not even represent that those collocations that have been completed were completed on time and on other terms and conditions that comply with the Act. Just having completed collocations is insufficient -- they must have been completed in a

reasonable and nondiscriminatory manner, using procedures and intervals that can be measured and enforced. BellSouth has not shown that they were.

A second crucial defect in BellSouth's interconnection offering is its failure to allow CLECs to interconnect at its local tandem switches. Although on paper the SGAT seems to permit such interconnection -- at least through the BFR process -- in practice BellSouth has not made available the information that CLECs need in order to interconnect at the local tandems. See Henry Decl. ¶ 27. Thus, while BellSouth and independent local telephone companies exchange local traffic at the local tandems, CLECs must interconnect at the access tandem instead. Removing CLECs' local traffic from BellSouth's local network and placing it on the access network used by interexchange carriers has two effects. First, it prevents the trunk groups carrying BellSouth's local traffic from sharing capacity with CLECs' local traffic, thus reducing trunk blockage for BellSouth's customers' calls. Second, by placing the local traffic of CLECs like MCI on the trunk groups carrying interLATA traffic, it can degrade the quality of service for CLECs' local and interLATA customers. Henry Decl. ¶ 27. In other words, BellSouth's resistance to CLECs' interconnection at the local tandems is a mechanism to avoid providing interconnection that is at parity to the interconnection that BellSouth provides to itself and to independent LECs.

BellSouth's application suffers from additional deficiencies related to interconnection as well. The trunk blockage data submitted by BellSouth fail to demonstrate that BellSouth provides interconnection on an equal-in-quality basis. Although this Commission clearly stated in its Michigan Order that it could not find a BOC to have satisfied its parity obligation unless the BOC submitted data showing actual trunk blockage rates or absolute numbers of calls blocked, see Michigan Order ¶¶ 232-34, BellSouth provided only data showing the number of trunk groups that

had blockage rates greater than 3%. See Stacy II Aff. ¶¶ 75-83, Exs. WNS-11, WNS-12, WNS-13. In addition, BellSouth refuses to complete calls to a third-party carrier's end users unless it determines that those calls are "authorized." See SGAT § I.A.5. There is no justification for BellSouth's arrogation of the role of regulator. See Henry Decl. ¶ 29.

Unbundled Local Loops. Nowhere in its SGAT, or in the affidavits supporting its application, does BellSouth commit to a standard interval within which it will provide unbundled local loops, one of the most important checklist items for facilities-based local competition. MCI's local entry plans, for example, rely heavily on the availability of unbundled loops via collocation. See Henry Decl. ¶ 13. Parity in the provisioning of unbundled loops is particularly important because of the clear and direct influence that it has on CLECs' ability to compete: CLECs will have difficulty attracting customers if BellSouth forces customers to wait five days to initiate service with a CLEC but gives them BellSouth service in one day. See Henry Decl. ¶ 38. Yet BellSouth has provided no evidence to support the conclusion that it can and will provide unbundled loops at parity.

Similarly, BellSouth does not address important implementation concerns relating to loop cutovers that must be coordinated with interim local number portability ("ILNP"). If ILNP and loop cutovers are not coordinated by BellSouth, the CLEC's customer will suffer a loss of service. See Henry Decl. ¶¶ 50-52. Yet BellSouth makes no commitment in its SGAT to coordinate loop cutovers and ILNP, and its affidavits simply assume that having provided loops and ILNP is sufficient to demonstrate checklist compliance, without addressing the procedural details that are critical to nondiscriminatory access. See Varner Aff. ¶¶ 172-75; Milner Aff. ¶ 97.

Other Unbundled Network Elements. BellSouth does not offer adequate proof that it

can provide two other critical unbundled network elements, unbundled transport and unbundled switching. First, the SGAT does not offer trunk ports as part of its tandem switching and local switching network elements. See SGAT §§ V.A.3., VI.A. Thus, no unbundled local transport element is actually available because BellSouth offers no way for the transport element to connect to the switch. See Henry Decl. ¶ 39. Also, BellSouth has presented no evidence that it can provide unbundled transport on terms and conditions that comply with the Act. See Henry Decl. ¶ 40. Second, BellSouth points to no testing that has been done to determine that BellSouth can provide an unbundled local switching element with all features, functions, and capabilities of the switch on terms that comply with the Act. MCI's own experience indicates that BellSouth is not prepared to offer unbundled switching as a standard network element: MCI's request for unbundled local switching in Florida has been pushed to the BFR process and has yet to be resolved. See Henry Decl. ¶ 41.

Resale. The resale offering in BellSouth's SGAT is plainly inconsistent with the Act in that it does not permit CLECs to purchase contract service arrangements ("CSAs") at the wholesale discount for resale to end users. See BellSouth Br. at 53; SGAT § XIV.B.1.; Varner Aff. ¶¶ 191, 192. The Act, by contrast, requires ILECs to make all telecommunications services available to CLECs at a wholesale discount, 47 U.S.C. § 251(c)(4), without any exception for CSAs.

Reciprocal Compensation. BellSouth's SGAT does not provide for reciprocal compensation for termination of calls because it fails to recognize that MCI's and other CLECs' switches can perform the same functions as BellSouth's tandem switches. See Henry Decl. ¶¶ 57-58. BellSouth's network utilizes a "star" topography, in which several local switches subtend a